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Attorneys for Debtor,
MICHAEL RUFFNER

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION

In Re:
MICHAEL RUFFNER

Trojan Capital Investments, LLC
Movant,

v.

Michael Ruffner, Debtor,

Respondents.

In Proceedings Under Chapter 7

Case No.: 8:17-bk-14421-ES

**DECLARATION OF BRIAN C. ANDREWS,
ESQ. IN SUPPORT OF DEBTOR'S
OPPOSITION TO MOVANT'S MOTION
FOR RELIEF FROM AUTOMATIC STAY**

Date: 1/11/2018
Time: 10:00 a.m.
Ct rm/Floor: 5A
Judge: Hon.Erithe A. Smith

I, Brian C. Andrews, Esq., declare as follows:

1. I am an attorney at law duly licensed to practice before all courts in the State of California and before the United States District Courts for the Northern, Central and Southern Districts of California. I am the attorney of record for MICHAEL RUFFNER ("Debtor"), in the above-entitled proceedings and, as such, I have knowledge of the matters contained herein and they are true and correct of my own personal knowledge, except for those matters stated upon information and belief; as to those matters, I believe them to be true and correct and believe my information is from a reliable source. If called and sworn as a witness, I could and would testify competently thereto.

///

1 2. I make this declaration in support of the Opposition to the Motion for Relief from
2 Stay filed by the Movant, TROJAN CAPITAL INVESTMENTS, LLC.

3 3. I pray that this Court exercise its discretion to consider these late-filed papers on
4 behalf of Debtor. Debtor indicates to me that he possesses, and has attempted to gather, documents
5 needed to prove the instant Motion is frivolous, but that he has been unable to do so within the time
6 constraints of this Motion. Debtor sought legal advice elsewhere, but only was referred to my
7 office today, the day before the instant Motion is to be heard. When Debtor was unable to secure
8 the needed documentation, and unable to find legal help, and confused as to what to do and how to
9 file papers in this Federal Bankruptcy Court, he did not know what to do. Debtor is not an Attorney
10 and he failed to navigate the relevant rules in order to figure-out his written Opposition to the
11 instant Motion is now well past due.

12 4. I have now substituted in for Debtor only today. It is late in the evening by the time
13 I could prepare this Declaration. I have not had sufficient time to prepare Declaration of Debtor,
14 which he indicates he will sign, and which I wish to present to this Court, along with payment
15 records and other documents that Debtor is confident he possesses, but is still trying to locate.

16 5. As Counsel for Debtor, **I seek primarily a Continuance of this instant Motion, so**
17 **that I can properly present Debtor's Opposition. Debtor asserts that he has paid IN FULL a**
18 **predecessor owner of the subject Note, for which note Moving Party is seeking relief of Stay**
19 **to foreclose upon.** Lifting Stay, in my analysis, would cause Debtor and the Debtor's Bankruptcy
20 estate great harm, as it would cause Debtor to need to seek leave of the Trustee to sue this alleged
21 Creditor, TROJAN CAPITAL INVESTMENTS ("Moving Party"), and to expend unfair and
22 exorbitant sums on legal services, to sue and seek a TRO as against Moving Party.

23 6. On the other hand, Moving Party will suffer no prejudice if this matter is continued
24 long enough for Debtor to obtain the needed records establishing that Moving Party does not hold a
25 valid note, and therefore is not entitled to the lifting of Stay in this matter in the first instance. The
26 balance of equities strongly suggests that Debtor should be granted a continuance, so that this Court
27 can rule on the instant Motion with the actual merits and complete information before it. Public
28 policy favors decisions on the merits. Debtor prays for more time to file a fuller Opposition.

1 7. In 2007 the alleged Note which is the subject of Moving Party's instant Motion was
2 owned and/or serviced by National City Bank. I am informed and believe that **National City Bank**
3 **made a deal with Debtor and accepted a full payoff of this subject Note from Debtor. Debtor**
4 **has had a hard time securing the needed proof, as the pay-off occurred over ten years ago.**

5 8. Even if Debtor is mistaken, which I do not admit or in any way insinuate that he is,
6 in the alternative, **this second mortgage lien is strippable, via motion or adversary proceeding.**
7 Attached as **Exhibit A** to this Declaration is a true and correct copy of a Zillow estimate for the
8 house value, setting estimated value of subject property at below one million dollars. **The first**
9 **note alone more than consumes all equity in the subject property. This fact, among others,**
10 **will support a Motion to Strip the lien of Moving Party, which is another matter Debtor prays**
11 **he be allowed time to put before this Court, before he is forced to deal with Moving Party's**
12 **claims in State Court, in the midst of damaging/expensive (but illegal) foreclosure proceeding.**

13 9. Attached as **Exhibit B** to this Declaration is a true and correct copy of a letter
14 Debtor received from Moving Party, dated February 23, 2017. The said letter states that last
15 payment was received by Moving Party on "8/17/2007" . . . **and yet I am informed and believe**
16 **that Moving Party is alleging in this BK proceeding that no payments were ever made on the**
17 **subject Note underlying the instant Motion.** This Claim of this Creditor has serious problems.

18 10. Having only been retained today, I have not been able to review in sufficient and
19 needed detail all the Petitions, Claims, Motions, and other documents filed in this BK proceeding.
20 **As new Counsel for Debtor, I pray that I be allowed time to do so. Moving Party's instant**
21 **Motion indicates that "\$363,066.08" is owed in PRINCIPAL (see page 7 of instant Motion, at**
22 **Questions 7 and 8) despite that Moving Party attaches a Deed of Trust and a Note that only**
23 **called for payment of \$172,385.00 (!?!).** Clearly Moving Party has attempted to lump-in as
24 principal all alleged interest earned on the alleged Note, and made no effort (or lacks the needed
25 servicing records) to plead accurately what portion of this debt is principal, what part is interest,
26 what part is fees or other costs, what part has been paid, and what sum is actually owed (if any).
27 **Moving Party's papers are errant on their face; Debtor needs more time to obtain and file**
28 **documents available to prove that this debt is paid, not credited correctly, and/or strippable.**

I declare under penalty of perjury under the laws of the State of California, and the United States of America, that the foregoing facts are all true and correct, and that this Declaration was executed by me on January 10, 2018, in the County of San Diego, California.

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EXHIBIT "A"

CORRECT HOME FACTS

♡ SAVE ✉ SHARE MORE ▾

🗲 EXPAND ✕ CLOSE



bing

**4829
Camino
Costado
San
Clemente, CA
92673**

**4 beds · 3 baths ·
2,916 sqft**

OFF
MARKET

Zestimate™:

\$994,160

Rent

Zestimate:

\$4,175 /mo

EST. REFI
PAYMENT

Est. Refi

Payment:

\$3,852/mo



See current
rates

**Home Shoppers are
Waiting**



126 shoppers are looking in your
neighborhood and price range.

Your name

Phone

Email

I own this home and would like
to ask an agent about selling
4829 Camino Costado, San

Contact Agent

Or call 949-531-7716 for more info

This 2916 square foot single family
home has 4 bedrooms and 3.0
bathrooms. It is located at 4829
Camino Costado San Clemente,
California.

FACTS

- Lot: 7,290 sqft
- Built in: 2000
- Last

EXHIBIT "B"



TROJAN
CAPITAL INVESTMENTS

2618 SAN MIGUEL DRIVE, SUITE 316
NEWPORT BEACH CA 92660-5437
Tel: (877) 684-9517 Fax: (855) 560-4922

Hours of Operation: 8:30 AM - 5:30 PM Pacific Time

February 23, 2017

MICHAEL RUFFNER
4829 Camino Costado
San Clemente CA 92673-6414

Account #: 3000000315
Current Creditor Name: TROJAN CAPITAL INVESTMENTS, LLC
Borrower Name: MICHAEL RUFFNER
Account Balance Due As Of 2/12/2017, \$309,286.84

Property Address:
4829 CAMINO COSTADO
SAN CLEMENTE CA 92673

ACCOUNT STATEMENT

Dear MICHAEL RUFFNER :

Please see your current account information below:

ACCOUNT PRINCIPAL
\$172,916.74

ACCRUED INTEREST
\$136,370.10

ACCOUNT BALANCE
\$309,286.84

Monthly Interest Rate: 8.375%

Monthly Payment Amount: \$1,746.22

Your last payment was made on 8/17/2007

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.

PLEASE SEE REVERSE SIDE OR SECOND PAGE FOR IMPORTANT NOTICES.

2618 SAN MIGUEL DRIVE, SUITE 316 • NEWPORT BEACH CA 92660-5437 • Tel: (877) 684-9517 • Fax: (855) 560-4922

*** Detach Lower Portion And Return With Payment ***

1579-SFTRFS40-AACCSTAT10-10/06/14

Y1D4852822

2618 San Miguel Drive, Suite 316
Newport Beach CA 92660-5437
ADDRESS SERVICE REQUESTED

Account #: 3000000315
Borrower Name: MICHAEL RUFFNER
Account Balance: \$309,286.84

Phone: (877) 684-9517
Fax: (855) 560-4922



0008120024002107814402673841428-1YA1-Y1D4852822 1579

MICHAEL RUFFNER
4829 Camino Costado
San Clemente CA 92673-6414



Trojan Capital Investments, LLC
2618 San Miguel Drive, Suite 316
Newport Beach CA 92660-5437

1354678-001579-01-1-A-A

EXHIBIT "C"

National City

Loan Servicing Center
1900 East 9th St.
Cleveland, OH 44114-3484

October 16, 2007

MICHAEL RUFFNER
4829 CAMINO COSTADO
SAN CLEMENTE, CA 92673-3634

RE: Home Equity Account #5039156340001

Dear MICHAEL RUFFNER

We are writing today to confirm closure of your above-referenced account.

- Since this account was secured by a lien on your home, a request to release this lien has been sent to the county recorder in which the collateral is located. After it is recorded, the release documents will be sent to you for your records.

In order to prevent insurance problems in the future, please instruct your insurance agent to remove National City Bank as the Loss Payee or Assignee on your policy.

If you have moved, we need your updated address information for income tax reporting of your 1098 – Mortgage Interest Statement. Please call us at the number below.

Using your home's equity can be one of the most intelligent ways to manage your on-going financial needs. You chose wisely when you established your National City Home Equity Account – it is the tax smart* way to fund major purchases and expenses.

We hope you will consider National City Bank for your future financial needs.

We appreciate the opportunity to help you manage your home asset. With National City Bank, you will benefit from the safety and security of one of the nation's most experienced financial institutions – with more than 150 years of helping customers succeed through each stage of their life.

If you have any questions or need additional information, please call us at 1-888-344-6676, Monday through Friday 7 a.m. to 9 p.m. ET or Saturday 9 a.m. to 6 p.m. ET.

Sincerely,

Paid Loans Department

*Consult your tax advisor.

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